

ENTERED

August 21, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOSE ZUNIGA, *et al.*,

Plaintiffs,

v.

GRACIA MEXICAN KITCHEN, LLC.

et al.,

Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:19-CV-19

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION ON
MOTIONS TO DISMISS**

Before the Court is Magistrate Judge Jason B. Libby's Memorandum and Recommendation (M&R), entered on July 10, 2019. (D.E. 38). The M&R recommends that the Court deny the Motion to Dismiss filed by Defendants Matthew Hoeg, Brian Smith, and Adrian Hembree. (D.E. 11). The M&R also recommends that the Court grant Defendant David Martinez's Motion to Dismiss. (D.E. 27).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No timely objection has been filed. When no timely objection has been filed, the district court need only determine whether the magistrate judge's memorandum and recommendation is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, LP*, No. CIV. A. H-14-2700, 2015 WL 3823141, at *1 (S.D. Tex. June 18, 2015).

Having carefully reviewed the proposed findings and conclusions of the Magistrate

Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court ADOPTS the M&R in its entirety. (D.E. 38). Accordingly, the Motion to Dismiss filed by Defendants Hoeg, Smith, and Hembree is DENIED. (D.E. 11).

Regarding Defendant Martinez's Motion to Dismiss (D.E. 27), the M&R recommends granting the motion because Plaintiff Jose Zuniga did not plead sufficient facts to support his claims against Martinez. (D.E. 38, p. 6). The Court agrees. However, Plaintiff has since filed an amended complaint, adding allegations against Defendant Martinez, which include:

Specifically, Defendant Martinez hired multiple employees such as Alfred Ariola.

Defendant Martinez also set the pay rate of those individuals he directly hired. Martinez personally set the rate of pay for Alfred Ariola at forty thousand dollars per year.

Defendant Martinez directed and trained employees in the kitchen. Martinez ensured line cooks and other employees in the kitchen prepared food for customers in the way he directed.

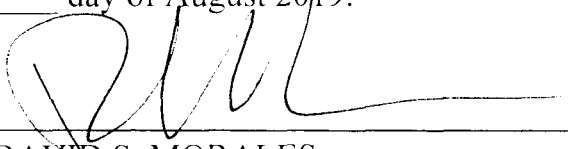
Defendant Martinez directed Plaintiff Zuniga to ensure dishes were wiped down after they came out of the washing machine. Defendant Martinez also instructed Plaintiff Zuniga to wash paper plates in order to save money.

(D.E. 40, p. 5).

Although Plaintiff's First Amended Complaint (D.E. 40) is not the subject of the M&R or the underlying motions to dismiss (D.E. 11, 27), it appears that with the addition of these allegations, the First Amended Complaint is sufficient as to all Defendants, including Defendant Martinez. Accordingly, Defendant David Martinez's Motion to

Dismiss is DENIED. (D.E. 27).

SIGNED and ORDERED this 21st day of August 2019.

A handwritten signature in black ink, appearing to read 'D. Morales', is written over a horizontal line.

DAVID S. MORALES
UNITED STATES DISTRICT JUDGE